

Submitted April 12, 2014
Approved as of
Date April 12, 2014

**MINUTES OF THE ROCKVILLE BOARD OF APPEALS
MEETING NO. 01-2014
Saturday, January 11, 2014**

The City of Rockville Board of Appeals convened in regular session in the Mayor and Council Chambers at 9:00 a.m., Saturday January 11, 2014.

PRESENT

W. Thomas Curtis, Chair
Peter Mork
Steven Wilcox
Jeryl O. Gegan, Alternate

Staff Present: Cindy Walters, Senior Assistant City Attorney
Jim Wasilak, Chief of Planning
Bobby Ray, Principal Planner
Cas Chasten, Planner III
Nicole Walters, Planner II

I. ELECTION of CHAIR for 2014

Dr. Mork moved, seconded Dr. Wilcox, to keep W. Thomas Curtis as Chair and Jeryl Gegan as alternate of the City of Rockville Board of Appeals through to the 2014 August recess. The motion passed unanimously.

II. PUBLIC HEARING

A. Variance Application VAR2014-00039, Daniel Veirs (D.H. Veirs Contracting) for Donna Tehan, 900 Willowleaf Way – A rear yard setback variance requested for the construction of a sunroom/breakfast addition, i.e., the proposed addition will encroach 17.4 feet into the 25 foot rear yard setback area. The property is zoned R-90 (Single Unit Detached Dwelling (Restricted Residential)).

Nicole Walters presented the staff report and answered questions from the Board.

Daniel Veirs of D.H. Veirs Contracting, contractor for the applicant, summarized the proposed home addition and answered questions from the Board.

Dr. Mork moved, seconded by Dr. Wilcox, to approve variance VAR2014-00039 for 900 Willowleaf Way for the reasons stated in the staff report. The motion passed 3-0.

B. Reconsideration of Special Exception SPX2013-00387, 731 W. Montgomery Avenue. At the September 14, 2013, meeting, the Board denied the applicant's request to increase the number of children being cared for from 8 children to 12 children, in the R-60 zone. The applicants submitted a request for reconsideration to the Board on September 26, 2013, and the Board granted the request on November 9, 2013.

Nicole Walters presented the staff report and answered questions from the Board.

Soo Lee-Cho of Miller, Miller and Canby spoke on behalf of the applicant regarding the new shared parking arrangement with the adjacent Church of God property. She stated that discussions were in progress but no formal confirmation had been reached.

Mr. Mohammed answered several questions from Ms. Lee-Cho regarding the child care operations. He said the daycare center has been in operation for two years, and that his wife, the owner, has over 15 years' experience. The center's hours are from 6:30 a.m. to 6:30 p.m. and they have no intention of changing the hours. He answered questions from the Board.

He said they wanted to present this proposal but misunderstood the procedures. He said that he wanted to make a correction to the request concerning the proposed path from the church property, in that there was a miscommunication between he and his attorney. They would like to construct a path which does not currently exist, and they have an agreement to allow them to use the church parking spaces. He stated that by right the homeowner is allowed eight children. Currently, there are three infants and five toddlers, and the on-site parking has been allotted to the three infants, which will significantly cut down on the traffic. Mr. Mohammed also answered further questions from the Board.

The following citizens provided public testimony in opposition to the application:

Jack Gelin of 105 South Van Buren Street and Corresponding Secretary of the West End Citizens Association (WECA), stated that WECA submitted a letter to the Board which covered two grounds: 1) that the Board improvidently granted their motion and the shared driveway will always be an unresolved issue, and 2) that the way of life in the West End is being threatened because of the granting of institutional uses.

Noreen Bryan of 207 South Washington Street and President of WECA, stated that there is no real buffer separating the two driveways, no clear explanation of how the church parking will be utilized, and noted the increase of institutional uses with the neighborhood.

Marian Hull of 529 Brent Road mentioned an alleged traffic incident where a car drove in the wrong direction on Nelson Street to the applicant's home, causing a safety hazard.

Dennis Cain of 502 Carr Avenue spoke about the West End Neighborhood Plan and how it mentions that the area surrounding the intersection at West Montgomery Avenue and Nelson Street should not be institutionalized.

The meeting recessed at 11:00 a.m. and reconvened at 11:08 a.m.

Mr. Curtis reopened the session by stating that the Board would like to give the applicant the opportunity to review the conditions and additional information.

Soo Lee-Cho, representing the applicant presented her closing argument, but first addressed the comment made by Dennis Cain regarding the West End Plan. She stated that the only reference she could find was on page 11.21 regarding Monument Triangle and Nelson Street and doesn't think the provision applies to this case.

Jim Wasilak spoke on behalf of staff and read a section of the West End Neighborhood Plan of 1989 and stated that staff's conclusion was that the applicant's request does not violate the policy stated in the plan.

Ms. Cho continued her closing by stating that the Board is not authorized to make ad-hoc decisions to further a policy initiative because that is the purview of the Mayor and Council, and the Board is vested with the authority to apply the law as it stands today.

She further stated that the Board must find an adverse impact at the location above and beyond what a child care center with twelve children would otherwise generate if it's located anywhere else in an R-60 zone. Traffic and noise are not enough to deny the application.

Dr. Mork moved, seconded by Dr. Wilcox, to approve the reconsideration of Special Exception SPX2013-00387 for the property 731 West Montgomery Avenue, for the reasons stated in the staff report and with the conditions stated in the staff report, subject to the following revisions: 1) that Condition #3 would be modified to read, "The applicant must enforce a parking plan that assigns, at most, fifty percent of vehicles picking up and dropping off children to the childcare center and, at least fifty percent at the Rockville Church of God. Such vehicles must park in the designated parking spaces as represented by the parking plan; 2) the addition of a new Condition #9 to read, "The applicant must inform all visitors and parents and enforce that all parents picking up and dropping off children at the home via private vehicle, do so consistent with the proposed plan and conditions, and they are to park only in designated parking spaces; and 3) the addition of Condition #10 to read that "The applicant must maintain the residential appearance of the property."

Ms. Cho indicated that all amended conditions were acceptable to the applicant.

The motion passed 3-0.

III. COMMISSION ITEMS

- A. OLD BUSINESS** – Mr. Curtis asked the Board if they would like to have the ex parte rules as an amendment to the Rule of Procedure or if they would like to have them adopted separately as formal rules by the Board.

After some discussion the Board decided they would like to have the City Attorney's guidance and requested draft stand-alone language to review prior to the next meeting on February 8, 2014.

B. NEW BUSINESS - Approval of 2014 meeting calendar – *Dr. Mork moved, seconded by Dr. Wilcox, to accept the noted calendar dates with the exception of December 14th, which will be moved to December 6th to avoid conflicts with the holiday. The motion passed 3-0.*

C. MINUTES – *Dr. Mork moved, seconded by Dr. Wilcox, to approve minutes for meeting 11-2013 on November 9, 2013. The motion passed 3-0.*

Dr. Mork moved, seconded by Dr. Wilcox, to approve minutes for meeting 12-2013 on November 21, 2013. The motion passed 3-0.

IV. ADJOURNMENT - None

There being no further business to come before the Board, the Chair adjourned the meeting at 12:23 p.m.

Respectfully Submitted

Sandra Y. Driver, Commission Secretary